

Remarks

The first Office Action rejected all pending claims 42-70. The Applicant has hereinabove presented minor amendments to independent claims 42, 55 and 69 to change "proactively monitoring" to "monitoring." Support for these amendments includes the original language of claim 1. Claim 64 has been amended to correct a minor typographical error.

These amendments are proper, do not introduce new matter or narrow the scope of the claimed subject matter, and better set forth the claimed subject matter pursuant to 35 U.S.C. §112, second paragraph.

Rejection of Claims Under 35 U.S.C. §102(e)

Claims 42-26, 52-53, 55-59, 64, 66-67 and 69-70 were rejected as being anticipated by U.S. Published Patent Application No. 2001/0056362 to Hanagan et al. ("Hanagan '362"). This rejection is respectfully traversed.

With regard to independent method claim 42, Hanagan '362 at least fails to disclose *"monitoring for an occurrence of an event associated with operation of a distributed data storage system,"* and *"characterizing the event as a usage event related to a usage rate of said system or a non-usage event not related to a usage rate of said system."*

The Examiner identified the operation of order processing (OP) block 22 of Hanagan '362 as corresponding to the recited "monitoring" step, and identified the operation of Event Rater and Pricer (ERP) block 16 as corresponding to the recited "characterizing" step. This is respectfully traversed.

It is noted that the event characterized by the characterizing step of claim 42 is the

event monitored for by the monitoring step. The rejection is therefore improper at least on the basis that the disclosed OP block 22 monitors service requests, whereas the ERP block 16 independently processes billing events. See e.g., Hanagan '362, paras. 0079, 0081, and 0196.

Moreover, the Applicant respectfully traverses that the disclosed usage and non-usage events of Hanagan '362 can be fairly characterized as being "related to a usage rate" or "not related to a usage rate" of a distributed data storage system, respectively, as claimed.

Nevertheless, assuming *arguendo* that such characterization can be made, Hanagan '362 further fails to disclose "adjusting a parameter of the data storage system when the event is characterized as a usage event." The Examiner identified the storing of all processed events by the ERP 16 into a billing database 29 as satisfying this limitation. This is respectfully misplaced.

No one with skill in the art would reasonably view the storing of data in a memory location of a data storage system as "adjusting a parameter" of the system. "Parameter" is a term of art that would be understood by a skilled artisan as a variable or other adjustable setting that controls operations taken by the system. See e.g., present application, page 4, lines 27-29. Expanding the construction of the term "adjusting a parameter" to include the storing of data impermissibly eviscerates the limitation from the claim, and is thus improper.

Hanagan '362 further fails to disclose "executing a diagnostic routine when the event is characterized as a non-usage event." Again, the Examiner has mischaracterized Hanagan '362 by returning to the service request monitoring of the OP block 22 to satisfy

this limitation. However, nothing carried out by the OP block 22 can be fairly characterized as execution of a "diagnostic routine."

Indeed, Hanagan '362 is silent with regard to any operations by the OP block 22 that are carried out in response to the characterization of an event as a non-usage event, as claimed.

Accordingly, Hanagan '362 fails to disclose the invention as claimed. Reconsideration and withdrawal of the rejection of claim 42, as well as for the claims depending therefrom, are respectfully requested on this basis.

As Hanagan '362 is similarly deficient with regard to the subject matter of independent apparatus claims 55 and 69, reconsideration and withdrawal of the rejections of these claims, and for the claims depending therefrom, are also respectfully solicited.

Rejection of Claims Under 35 U.S.C. §103(a)

Dependent claims 47 and 60 were rejected as being obvious over Hanagan '362 in view of U.S. Patent No. 6,138,207 to Rossum (Rossum '207"). Dependent claims 49, 51, 54, 62 and 68 were rejected as being obvious over Hanagan '362. Dependent claims 50 and 63 were rejected as being obvious over Hanagan '362 in view of U.S. Patent No. 6,073,105 to Sutcliffe et al. ("Sutcliffe '105"). Claim 65 was rejected as being obvious over Hanagan '362 in view of U.S. Patent No. 5,206,497 to Lee ("Lee '497").

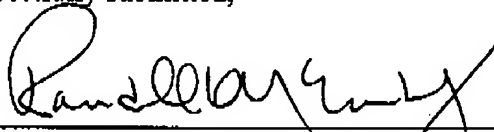
These rejections are respectfully traversed on the basis that none of these additional references add anything of significance to make up for the deficiencies of Hanagan '362. Reconsideration and withdrawal of the rejections of these claims are therefore respectfully solicited on this basis as well.

Conclusion

This is intended to be a complete response to the first Office Action mailed January 30, 2006. Reconsideration and allowance of all of the pending claims are respectfully requested.

Should any questions arise concerning this Response, the Examiner is cordially invited to contact the below-signed attorney.

Respectfully submitted,

By: 

Randall K. McCarthy, Registration No. 39,297
Mitchell K. McCarthy, Registration No. 38,794
Fellers, Snider, Blankenship, Bailey and Tippens, P.C.
100 N. Broadway, Suite 1700
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
Customer No. 33900